(Jail) C. J. P. R./I-91 CrA 1522 (94

CF0000057847

(2)

APPEAL OF PRISONER

Division Bench (Criminal)

No. 1241 Name विष्णु राम

Father's name सुखू खांकर वासा मालवे थाना वतोली

Residence जिला अम्बिकापुर (म.प्र.) Age 35 वर्ष

Sentenced to आजन्म कारावास on 6/10/94 ST NO 42/93

Under Section 302, I.P.C. by द्वितीय अपर सत्र न्यायाधीश सरगुजा अम्बिकापुर

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 6/10/94

2 Date on which copy received 10/10/94

3 Date on which Appeal sent 11/94

4 Whether the prisoner wishes to be represented or not. N.

No. 1241 Name विष्णु राम अदि सुखू

Confined in केन्द्रीय Jail रायपुर (म.प्र.)

No. 944 /Law/ Dated 1994. 2/11/94

Forwarded to the आर. एल. पेंजीमंत उच्च न्यायालय जबलपुर (म.प्र.) together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent
केन्द्रीय जेल रायपुर. (म. प्र.)

Date of receipt in Office

Date of receipt of record to accompany the

Memo of Appeal to the Appellate court

No. Dated 199

Forwarded to the

Madhya Pradesh
JABALPUR
14 NOV 1994
Regd. No. 1027
Recpt Clerk
High Court, Jabalpur

Date of receipt in Appellate court

[P.T.O.]

(21)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 1589 OF 1994

Vifnaram

Vs.

The State of Madhya Pradesh
(now State of Chhattisgarh)

JUDGMENT

(Dated 18th October, 2005)

(22)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 1589 OF 1994

Vifnaram

Vs.

The State of Madhya Pradesh
(now State of Chhattisgarh)

Coram :- **Hon'ble Shri Fakhruddin, Ag.C.J &**
Hon'ble Shri Dilip Raosaheb Deshmukh, J

Present :- Smt. Kiran Jain, counsel for the appellant.

Shri M.P.S. Bhatia, Panel Lawyer for the State.

Per Fakhruddin, Ag.C.J.

J U D G M E N T
(Dated 18th October, 2005)

Heard.

2. This appeal is directed against the judgment dated 6-10-1994 delivered in Sessions Trial No.42/93 by the Second Additional Sessions Judge, Ambikapur whereby the appellant was convicted under Section 302 of the Indian Penal Code for committing murder of Jheemanram Korva on 30-6-1992 at 6'O Clock in the evening in village Bansajal, Police Station Batoli and was sentenced to undergo imprisonment for life.

3. Briefly stated, the prosecution case is that on 30-6-1992 at 6'O Clock in the evening Jheemanram Korva returned from the

field and was sitting near haystack (*Pirol*) in front of his house. He asked his first wife (*Badi Patni*) to bring water. Meanwhile, appellant Vifnaram came to the house of Jheemanram and assaulted on his back, neck, head and other places due to which he received injuries and died. After assaulting the deceased, the appellant fled away from the spot. Asadi Bai (P.W.10) who is the former wife of the deceased and Kisni (P.W.11) another wife of the deceased were also present at the scene of occurrence. The motive behind committing murder is that Vifnaram was earlier adopted by Jheemanram and after the marriage, he was separated, therefore, he had enmity as to why after adoption he was left. First Information Report (Ex.P/11) was lodged by Senath (P.W.9). On report being lodged, the investigation started. The body was sent for post-mortem. The Post-mortem was conducted by Dr. B.K. Mishra (P.W.7). The post-mortem report is Ex.P/7. Tangia was seized on the memorandum of the accused. The seizure memo is Ex.P/3. Spot map was prepared vide Ex.P/6. On being charged, the case was committed to the concerned Court. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure. The accused denied the prosecution evidence and stated that he is innocent and he has been falsely implicated in the crime. After relying on

the evidence of eyewitnesses namely Asadi Bai (P.W.10) and Kisni (P.W.11), the Court below convicted the accused in the manner mentioned above.

4. Smt. Jain, learned counsel appearing for the appellant contended that the evidence of eyewitnesses namely, Asadi Bai (P.W.10) and Kisni (P.W.11) is not reliable.

5. We have gone through the evidence of eyewitness Asadi Bai (P.W.10). She has clearly stated in her evidence that in the evening she was sitting in the house. Deceased Jheemanram came from the field and was sitting near haystack (*Pirol*) in front of his house. He asked his first wife to bring water. The accused came with Tangia and started assaulting Jheemanram. As a result of which the deceased received injuries on the head, shoulder etc. On this P.W.10 started raising the cries, and after hearing her cries the villagers assembled. Jheemanram died and the appellant fled away from the spot. In the cross-examination, Asadi Bai (P.W.10) has said that they were living in the same area. In para-4 of the cross-examination, she has stated that the appellant fled away from the spot after assaulting Jheemanram and she had seen the accused on the spot. In para-5 of the cross-examination she has stated that the deceased was sitting towards north. The

(25)

appellant came from south. She stated that *Pirot* is visible from her house. It is incorrect to say that she had not seen the appellant when he assaulted the deceased. She further stated that there was no quarrel between the accused and the deceased. She also stated that the accused came stealthily and assaulted. In para-6 of her evidence she stated that the appellant assaulted the deceased on his right shoulder, left shoulder and head, and thereafter, he fled away from the scene of occurrence.

6. We have also gone through the evidence of P.W.11 Kisni. In her evidence she has stated that she was sitting in her house. Her husband came and was sitting on the *Pirot*. The appellant came there and assaulted the deceased. In para-2 of her evidence she stated that both had gone to work and come together to the house. She also stated that at the time of the incident none else was in their house except both of them. She stated that when the accused assaulted the deceased, he died instantaneously. In paras-3 and 4 of the cross-examination, she has verified that *Pirot* was in front of the house. The distance between the courtyard and the *Pirot* is 20-25 feet. Her husband was sitting and she had gone for taking water. As soon as she entered the house, she heard the cries of her husband and on

hearing the cries she came there and saw that the body of her husband was drenched with blood.

7. The evidence of Asadi Bai (P.W.10) and Kisni (P.W.11) stands corroborated by the evidence of P.W.7 Dr. B.K. Mishra. The injuries sustained by the deceased are quoted below :

i) Incised wound on occipital region of scalp 6 cms. x 1cm. x bony deep. On palpation bony crepitation was felt. Wound was oval in shape both ends having narrow ends. Margin was clean cut. Blood clots were firmly adhered to the margins of the wound. Margins were bruised.

ii) Incised wound on right scapular region, size 6 x ½ x 1 cm. Blood clots firmly adhered to the margins. Margins were red in colour. Margins were bruised.

iii) Incised wound on neck region over trapezine muscle, size 6 x ¼ x ¼ cms. Margins red, clean cut, blood clots adhered to the margins. Margins were red.

8. In the case of *Shrishail Nageshi Pare vs. State of Maharashtra* reported in *AIR 1985 SC 866* the Apex Court has held that conviction can be based on evidence of a truthful eye

witness. Having given our thoughtful consideration we do not find any material by which it can be said that the evidence of eyewitnesses Asadi Bai (P.W.10) and Kisni (P.W.11) are not trustworthy. So far as offence is concerned, there are three multiple injuries found on the person of the deceased and the case is such which does not fall within the ambit of Section 304 Part-I or Part-II of the Indian Penal Code. It is a case of murder.

9. Having considered the facts and circumstances of the case, material on record as discussed herein above, there is no merit in this appeal. Accordingly, the appeal fails and is hereby dismissed.

10. Before parting, we appreciate the valuable assistance rendered by learned counsel for both the parties.

Sd/-
Acting Chief Justice

18-10-2005

Sd/-
Dilip Raosaheb
Deshmukh
Judge

Gowri